

Exhibit 5

Anthony C. Infanti  
807 Ridgefield Ave.  
Pittsburgh, PA 15216

November 25, 2019

USCIS FOIA/PA Appeals Office  
150 Space Center Loop, Suite 500  
Lee's Summit, MO 64064-2139

Re: Freedom of Information Act Appeal  
Regarding Request NRC2019619534

Dear Sir or Madam:

On September 23, 2019, I submitted a FOIA request through the online portal provided by U.S. Citizenship and Immigration Services (USCIS) regarding Hristo Ivanov. In a letter dated November 8, 2019, my request was approved in part and denied in part and was accompanied by an electronic file containing portions of 168 pages of documents, which were posted in the USCIS online FOIA portal for my retrieval and review. In a separate letter also dated November 8, 2019, which I received through U.S. mail rather than through the online USCIS portal, my access to media that was included in Hristo Ivanov's file was denied on the ground that the National Records Center does not possess the technology to reproduce or process the Gray Audograph disc that was in the file. For your information, I have enclosed copies of both of these decision letters with this appeal.

I am writing now to appeal the decision to deny access to the Gray Audograph disc. In response to the denial letter that I received, I first tried emailing the contact address included in the denial letter on November 15, 2019, in order to achieve an informal resolution of this matter. As I explained in that email:

While I understand your inability to reproduce this disc, I was wondering if there is any possibility of my being able to listen to the disc if I were to come to DC (or wherever the disc is being housed). The reason that I ask is that I was adopted and, after years of searching, I have learned that the subject of my request is my birth father. It would mean quite a lot to me to be able to listen to the disc (never having heard [his] voice before), if that is at all possible.

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On November 19, 2019, I received a response to this email indicating that USCIS does not have the equipment to play a Gray Audograph disc. On the same day and after doing some preliminary research to locate a service that might convert the disc to a readily accessible format, I replied to that email inquiring about whether it would be possible for arrangements to be made for the disc to be converted to a different format (e.g., mp3). I offered to pay for the conversion and even to share the converted file with USCIS in case USCIS were ever to receive a FOIA request for the disc from someone else again in the future. Today, I received a response to that email that once again denied my request, merely repeating that the National Records Center cannot process the file. A copy of this chain of email correspondence is also enclosed with this letter.

These persistent denials of my request for access to the Gray Audograph disc are at odds with the purpose of the Freedom of Information Act. If I am not being denied access to this material on a substantive ground but merely because of the lack of readily available equipment to process or listen to the disc, then it would seem reasonable to allow for arrangements to be made to have the disc converted to a format that is readily accessible. As I specified in my earlier email, I am happy to cover the cost of converting the disc to a format that can be processed and listened to. In fact, as the Freedom of Information Act specifically provides:

In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

5 U.S.C. § 552(a)(3)(B). Moreover, as the court noted in *Scudder v. Central Intelligence Agency*, 25 F. Supp. 3d 19, 38 n.10 (D.D.C. 2014), when interpreting this requirement:

The legislative history provides some indication of the level of effort that would be viewed as “reasonable” to satisfy an agency’s obligation to honor new format requests. For example, Senator Leahy, the bill’s primary sponsor in the Senate, set out his views in a supplement to the Senate Committee on the Judiciary Report, S.R. No. 104–272 (1996) (“Senate Report”) on the E-FOIA Amendments, stating that “[w]hen requesters seek to have data retrieved according to specifications other than those normally used by agencies for data retrieval ... agencies should comply with such request where they can reasonably and efficiently do so. We recognize that this requirement ... holds some potential for compelled software creation.” Senate Report at 28.

My request and the associated offer to pay to convert the file to a more easily reproducible format would not only be in keeping with the spirit of the Freedom of Information Act but would also facilitate USCIS’s compliance with the act in the future by aiding USCIS in making “reasonable efforts to maintain its records in forms or formats that are reproducible.” Notably this request would facilitate USCIS’s compliance with the Freedom of Information Act without imposing any burden—let alone an undue or unreasonable burden—on the agency. For these reasons, I respectfully appeal the denial of my request and ask that you work with me to make

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arrangements to have the Gray Audograph disc converted, at my expense, to a readily accessible format.

Thank you in advance for considering this appeal, and I look forward to receiving your decision regarding this appeal.

Very truly yours,

Anthony C. Infanti